

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

ANDREW LEE, DDS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SENTINEL INSURANCE COMPANY,
LIMITED,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff, ANDREW LEE, DDS, (“Lee”), individually and on behalf of all other similarly situated members of the defined national class and Washington State sub-classes (the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant Sentinel Insurance Company, Limited (“Sentinel or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in

COMPLAINT—CLASS ACTION - 1

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiff's state
2 law claims under 28 U.S.C. § 1367.

3 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
4 Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing
5 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
6 this District and the state of Washington.
7

8 3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
9 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
10 issue in this Complaint arose in this District. Plaintiff's business is located in Tacoma, Pierce
11 County. This action is therefore appropriately filed in the Tacoma Division because a substantial
12 portion of the events giving rise to this lawsuit arose in Pierce County.
13

14 **III. PARTIES**

15 4. Plaintiff, Andrew Lee, DDS, owns and operates a dental business located at 320
16 138th St., Tacoma, Washington 98444.

17 5. Defendant Sentinel Insurance Company, Limited is an insurance carrier
18 incorporated and domiciled in Connecticut, with its principal place of business in Hartford
19 Connecticut.
20

21 **IV. NATURE OF THE CASE**

22 6. Due to COVID-19 and a state-ordered mandated closure, Plaintiff cannot provide
23 dental services. Plaintiff intended to rely on its business insurance to keep its business as a going
24 concern. This lawsuit is filed to ensure that Plaintiff and other similarly-situated policyholders
25 receive the insurance benefits to which they are entitled and for which they paid.
26

1 7. Defendant Sentinel issued one or more insurance policies to Plaintiff, including
2 Spectrum Business Owners Policy and related endorsements, insuring Plaintiff's property and
3 business and other coverages, with effective dates of January 2, 2020 to January 2, 2021.

4 8. Plaintiff's business property includes property owned and/or leased by Plaintiff
5 and used for general business purposes for the specific purpose of dental and other business
6 activities.

7 9. Defendant Sentinel's insurance policy issued to Plaintiff promises to pay Plaintiff
8 for "direct physical loss of or physical damage to" covered property.

9 10. Defendant Sentinel's insurance policy issued to Plaintiff includes Business
10 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil
11 Authority Coverage.

12 11. Plaintiff paid all premiums for the coverage when due.

13 12. On or about January 2020, the United States of America saw its first cases of
14 persons infected by COVID-19, which has been designated a worldwide pandemic.

15 13. In light of this pandemic, Washington Governor Jay Inslee issued certain
16 proclamations and orders affecting many persons and businesses in Washington, whether
17 infected with COVID-19 or not, requiring certain public health precautions. Among other things,
18 Governor Inslee's "Stay Home, Stay Healthy" order required the closure of all non-essential
19 businesses, including Plaintiff's business.

20 14. By order of Governor Inslee, dentists including Plaintiff were prohibited from
21 practicing dental services but for urgent and emergency procedures.

1 15. Governor Inslee’s “PROCLAMATION BY THE GOVERNOR AMENDING
2 PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent Medical Procedures,” dated March
3 19, 2020, also provides, in part:

4 WHEREAS, the health care person protective equipment supply chain in
5 Washington State has been severely disrupted by the significant increased use of
6 such equipment worldwide, such that there are now critical shortages of this
7 equipment for health care workers. To curtail the spread of the COVID-19
8 pandemic in Washington State and to protect our health care workers as they
9 provide health care services, it is necessary to immediately prohibit all hospitals,
10 ambulatory surgery centers, and dental orthodontic, and endodontic offices in
Washington State from providing health care services, procedures and surgeries
that require personal protective equipment, which if delayed, are not anticipated
to cause harm to the patient within the next three months.

11 16. No COVID-19 virus has been detected on Plaintiff’s business premises.

12 17. Plaintiff’s property has sustained direct physical loss and/or damage related to
13 COVID-19 and/or the proclamations and orders.

14 18. Plaintiff’s property will continue to sustain direct physical loss or damage covered
15 by the Sentinel policy or policies, including but not limited to business interruption, extra
16 expense, interruption by civil authority, and other expenses.

17 19. Plaintiff’s property cannot be used for its intended purposes.

18 20. As a result of the above, Plaintiff has experienced and will experience loss
19 covered by the Sentinel policy or policies.
20

21 21. Upon information and belief, Sentinel has denied or will deny all similar claims
22 for coverage.

23 **V. CLASS ACTION ALLEGATIONS**

24 22. This matter is brought by Plaintiff on behalf of itself and those similarly situated,
25 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).
26

23. The Classes that Plaintiff seeks to represent are defined as:

A. ***Business Income Breach of Contract Class:*** All persons and entities in the United States insured under a Sentinel policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities and whose Business Income claim has been denied by Sentinel.

B. ***Business Income Coverage Breach of Contract Washington Subclass:*** All persons and entities in the State of Washington insured under a Sentinel policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities and whose Business Income claim has been denied by Sentinel.

C. ***Business Income Declaratory Relief Class:*** All persons and entities in the United States insured under a Sentinel policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

D. ***Business Income Coverage Declaratory Relief Washington Subclass:*** All persons and entities in the State of Washington insured under a Sentinel policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.

E. ***Extended Business Income Breach of Contract Class:*** All persons and entities in the United States insured under a Sentinel policy with Extended Business Income Coverage who suffered a suspension of their business at the covered premises

1 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
 2 other civil authorities and whose Extended Business Income claim has been denied by
 3 Sentinel.

4 F. ***Extended Business Income Breach of Contract Washington Subclass:***

5 All persons and entities in the State of Washington insured under a Sentinel policy with
 6 Extended Business Income coverage who suffered a suspension of their business at the
 7 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
 8 other civil authorities and whose Extended Business Income claim has been denied by
 9 Sentinel.
 10

11 G. ***Extended Business Income Declaratory Relief Class:*** All persons and

12 entities in the United States insured under a Sentinel policy with Extended Business
 13 Income Coverage who suffered a suspension of their business at the covered premises
 14 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
 15 other civil authorities.
 16

17 H. ***Extended Business Income Declaratory Relief Washington Subclass:*** All

18 persons and entities in the State of Washington insured under a Sentinel policy with
 19 Extended Business Income coverage who suffered a suspension of their business at the
 20 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
 21 other civil authorities.
 22

23 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the

24 United States insured under a Sentinel policy with Extra Expense Coverage who sought
 25 to minimize losses from the suspension of their business at the covered premises in
 26 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,

1 and/or other civil authorities and whose Extra Expense claim has been denied by
2 Sentinel.

3 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
4 and entities in the State of Washington insured under a Sentinel policy with Extra
5 Expense coverage who sought to minimize losses from the suspension of their business at
6 the covered premises in connection with COVID-19 and/or orders issued by Governor
7 Inslee, and/or other civil authorities and whose Extra Expense claim has been denied by
8 Sentinel.
9

10 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
11 United States insured under a Sentinel policy with Extra Expense Coverage who sought
12 to minimize losses from the suspension of their business at the covered premises in
13 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
14 and/or other civil authorities.
15

16 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
17 entities in the State of Washington insured under a Sentinel policy with Extra Expense
18 coverage who sought to minimize losses from the suspension of their business at the
19 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
20 and/or other civil authorities.
21

22 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
23 United States insured under a Sentinel policy with Civil Authority Coverage who
24 suffered a suspension of their business and/or extra expense at the covered premises
25 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
26 other civil authorities and whose Civil Authority claim has been denied by Sentinel.

1 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
 2 and entities in the State of Washington insured under a Sentinel policy with Civil
 3 Authority coverage who suffered a suspension of their business and/or extra expense at
 4 the covered premises related to COVID-19 and/or orders issued by Governor Inslee,
 5 and/or other civil authorities and whose Civil Authority claim has been denied by
 6 Sentinel.
 7

8 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
 9 United States insured under a Sentinel policy with Civil Authority Coverage who
 10 suffered a suspension of their business at the covered premises related to COVID-19
 11 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.
 12

13 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and
 14 entities in the State of Washington insured under a Sentinel policy with Civil Authority
 15 coverage who suffered a suspension of their business at the covered premises related to
 16 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.
 17

18 24. Excluded from the Classes are Defendant's officers, directors, and employees; the
 19 judicial officers and associated court staff assigned to this case; and the immediate family
 20 members of such officers and staff. Plaintiff reserves the right to amend the Class definitions
 21 based on information obtained in discovery.

22 25. This action may properly be maintained on behalf of each proposed Class under
 23 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

24 26. **Numerosity:** The members of the Class are so numerous that joinder of all
 25 members would be impractical. Plaintiff is informed and believes that the proposed Class
 26

1 contains thousands of members. The precise number of class members can be ascertained
2 through discovery, which will include Defendant's records of policyholders.

3 27. **Commonality and Predominance:** Common questions of law and fact
4 predominate over any questions affecting only individual members of the Class. Common
5 questions include, but are not limited to, the following:
6

7 A. Whether the class members suffered covered losses based on common
8 policies issued to members of the Class;

9 B. Whether Sentinel acted in a manner common to the class and wrongfully
10 denied claims for coverage relating to COVID-19 and/or orders issued by Governor
11 Inslee, other Governors, and/or other civil authorities;

12 C. Whether Business Income Coverage in Sentinel's policies of insurance
13 applies to a suspension of business relating to COVID-19 and/or orders issued by
14 Governor Inslee, other Governors, and/or other civil authorities;

15 D. Whether Extended Business Income Coverage in Sentinel's policies of
16 insurance applies to a suspension of business relating to COVID-19 and/or orders issued
17 by Governor Inslee, other Governors, and/or other civil authorities;

18 E. Whether Extra Expense Coverage in Sentinel's policies of insurance
19 applies to efforts to minimize a loss at the covered premises relating to COVID-19 and/or
20 orders issued by Governor Inslee, other Governors, and/or other civil authorities;

21 F. Whether Civil Authority Coverage in Sentinel's policies of insurance
22 applies to a suspension of business relating to COVID-19 and/or orders issued by
23 Governor Inslee, other Governors, and/or civil authorities;
24
25
26

1 G. Whether Sentinel has breached its contracts of insurance through a blanket
2 denial of all claims based on business interruption, income loss or closures related to
3 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
4 authorities;

5 H. Whether, because of Defendant's conduct, Plaintiff and the class members
6 have suffered damages; and if so, the appropriate amount thereof; and
7

8 I. Whether, because of Defendant's conduct, Plaintiff and the class members
9 are entitled to equitable and declaratory relief, and if so, the nature of such relief.

10 28. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
11 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
12 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct
13 that give rise to the claims of the members of the Class and are based on the same legal theories.
14

15 29. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
16 the classes and has retained class counsel who are experienced and qualified in prosecuting class
17 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
18 Class.

19 30. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
20 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
21 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
22 common to all members of the class. The prosecution of separate actions by individual members
23 of the classes would risk inconsistent or varying interpretations of those policy terms and create
24 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
25 could also impair the ability of absent class members to protect their interests.
26

31. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide basis.

32. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is superior to all other available methods of the fair and efficient adjudication of this lawsuit. While the aggregate damages sustained by the classes are likely to be in the millions of dollars, the individual damages incurred by each class member may be too small to warrant the expense of individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions and the court system would be unduly burdened by individual litigation of such cases. A class action would result in a unified adjudication, with the benefits of economies of scale and supervision by a single court.

VI. CAUSES OF ACTION

Count One—Declaratory Judgment

(Brought on behalf of the Business Income Coverage Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory Relief Washington Subclass)

33. Previous paragraphs alleged are incorporated herein.

34. This is a cause of action for declaratory judgment pursuant to the Declaratory Judgment Act, codified at 28 U.S.C. § 2201.

35. Plaintiff Lee brings this cause of action on behalf of the Business Income Coverage Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income

1 Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense
2 Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil
3 Authority Declaratory Relief Washington Subclass.

4 36. Plaintiff Lee seeks a declaratory judgment declaring that Plaintiff Lee and class
5 members' losses and expenses resulting from the interruption of their business are covered by the
6 Policy.

7
8 37. Plaintiff Lee seeks a declaratory judgment declaring that Sentinel is responsible
9 for timely and fully paying all such claims.

10 **Count Two—Breach of Contract**

11 *(Brought on behalf of the Business Income Coverage Breach of Contract Class,*
12 *Business Income Coverage Breach of Contract Washington Subclass, Extended*
13 *Business Income Breach of Contract Class, Extended Business Income Breach of*
14 *Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra*
Expense Breach of Contract Washington Subclass, Civil Authority Breach of Contract
Class, and Civil Authority Breach of Contract Washington Subclass)

15 38. Previous paragraphs alleged are incorporated herein.

16 39. Plaintiff Lee brings this cause of action on behalf of the Business Income
17 Coverage Breach of Contract Class, Business Income Coverage Breach of Contract Washington
18 Subclass, Extended Business Income Breach of Contract Class, Extended Business Income
19 Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra
20 Expense Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class and
21 Civil Authority Breach of Contract Washington Subclass.

22 40. The Policy is a contract under which Plaintiff Lee and the class paid premiums to
23 Sentinel in exchange for Sentinel's promise to pay plaintiff and the class for all claims covered
24 by the Policy.
25
26

1 41. Plaintiff Lee has paid its insurance premiums.

2 42. Plaintiff Lee contacted his insurance agent in March to ask whether Sentinel
3 would provide coverage for his business interruption claim. Plaintiff was told that his claim
4 would not be covered.

5 43. On information and belief, Sentinel intends to deny Lee's claim, and Sentinel has
6 denied, and will continue to deny coverage for other similarly situated policyholders.
7

8 44. Denying coverage for the claim is a breach of the insurance contract.

9 45. Plaintiff Lee is harmed by the breach of the insurance contract by Sentinel.

10 **VII. PRAYER FOR RELIEF**

11 1. A declaratory judgment that the policy or policies cover Plaintiff's losses and
12 expenses resulting from the interruption of the Plaintiff's business related to COVID-19 and/or
13 orders issued by Governor Inslee, other Governors, and/or other authorities.
14

15 2. A declaratory judgment that the defendant is responsible for timely and fully
16 paying all such losses.

17 3. Damages.

18 4. Pre- and post-judgment interest at the highest allowable rate.

19 5. Reasonable attorney fees and costs.

20 6. Such further and other relief as the Court shall deem appropriate.
21

22
23 //

24 //

25 //
26

VIII. JURY DEMAND

Plaintiff demands a jury trial on all claims so triable.

DATED this 4th day of May, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry

By: s/ Lynn L. Sarko

By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Maureen Falecki

By: s/ Nathan L. Nanfelt

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

Ian S. Birk, WSBA #31431

Gretchen Freeman Cappio, WSBA #29576

Irene M. Hecht, WSBA #11063

Maureen Falecki, WSBA #18569

Nathan Nanfelt, WSBA #45273

1201 Third Avenue, Suite 3200

Seattle, WA 98101

Telephone: (206) 623-1900

Fax: (206) 623-3384

Email: awilliams-derry@kellerrohrback.com

Email: lsarko@kellerrohrback.com

Email: ibirk@kellerrohrback.com

Email: gcappio@kellerrohrback.com

Email: ihecht@kellerrohrback.com

Email: mfalecki@kellerrohrback.com

Email: nnanfelt@kellerrohrback.com

By: s/ Alison Chase

Alison Chase, *pro hac vice* forthcoming

801 Garden Street, Suite 301

Santa Barbara, CA 93101

Telephone: (805) 456-1496

Fax: (805) 456-1497

Email: achase@kellerrohrback.com

Attorneys for Plaintiff